IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 4787 of 2011 (O&M)
Date of decision: 2.11.2012

Fruit & Merchant Union

.. Petitioner

v.

Chief Information Commissioner and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Puneet Sharma, Advocate for the petitioner.
Mr. P. K. S. Gill, Advocate for respondent No. 2.
None for respondent No. 3 despite service.

...

Rajesh Bindal J.

1. Challenge in the present petition is to the order dated 3.3.2011 (Annexure P-8) passed by the State Information Commission, Punjab (for short, 'the Commission').

2. Learned counsel for the petitioner submitted that seeking certain information pertaining to the members of the Union regarding payment of market fee and rural development fund, application dated 29.11.2010 was filed by respondent No. 3 before the State Public Information Officer. Having come to know about the application filed by respondent No. 3, the petitioner objected to the information being sought by

third party. As the application filed by the petitioner was not decided, he filed an appeal before the first appellate authority, namely, the General Manager, Punjab State Agricultural Marketing Board.

3. After hearing learned counsel for the parties, the first appellate authority, vide order dated 24.2.2011 (Annexure P-5) directed that the concerned Information Officer should afford opportunity of personal hearing to the petitioner before any information is granted to the applicant-respondent No. 3.

4. During the pendency of appeal before the first appellate authority and having knowledge about the pendency thereof, respondent No. 3 bye-passing the remedy of filing appeal before the first appellate authority, taking the plea that the requisite information has not been supplied within the prescribed time, filed an application directly before the Commission, which was treated as a complaint and decided vide order dated 3.3.2011 (Annexure P-8) without notice to the petitioner with a direction that requisite information be furnished within a period of 15 days to respondent No. 3. This is despite the fact that the order passed by the first appellate authority had been produced before the Commission.

5. The only grievance of the petitioner is that he has been condemned unheard. Once the first appellate authority was ceased of the matter, respondent No. 3 should have disclosed this fact before the Commission even if he had filed the complaint. Respondent No. 3 never felt aggrieved against the order passed by the first appellate authority directing that the State Public Information Officer shall grant opportunity of personal hearing to the petitioner before taking decision on the application filed by respondent No. 3 for providing the information sought.

6. Counsel for respondent No. 3-complainant is not present despite service.

7. Learned counsel appearing for respondent No. 2 submitted that the State Public Information Officer is bound to comply with the orders passed by the higher authorities.

8. Heard learned counsel for the parties and perused the paper

book and the record of the Commission.

9. It is a case in which by filing application respondent No. 3 sought information from the State Public Information Officer as to how many licences in Vallah Vegetable Market were checked from 1.4.2010 onwards, the name of the firm, the amount of market fee and rural development fund assessed and the penalty recovered or recoverable. Having come to know that application has been filed by respondent No. 3 seeking third party information, the petitioner objected to the same. It was prayed that before the application of respondent No. 3 is decided, opportunity of hearing be given to the petitioner. The application of the petitioner having not been decided, it preferred appeal before the first appellate authority. The same was decided vide order dated 24.2.2011. It was directed that the petitioner shall be entitled to file written objections to the application filed by respondent No. 3 for supply of information and the concerned Public Information Officer shall decide the issue after hearing both the parties by passing an order.

10. There is no definite information available on record as to whether any notice was issued by the first appellate authority to respondent No. 3 before taking up the appeal. Even in his reply, respondent No. 3 has not taken any definite stand thereon. He merely stated that the appeal was not maintainable as no third party information had been sought. But the fact is clear that respondent No. 3 had the information about the order passed by the first appellate authority as it finds reference in the order passed by the Commission. Respondent No. 3 filed a complaint before the Commission, which was disposed of by passing a non-speaking order on 3.3.2011. Besides the order being non-speaking, the same was passed without even hearing the petitioner.

11. Respondent No. 3 had preferred complaint before the Commission during the pendency of appeal filed by the petitioner before the first appellate authority, as is evident from letter dated 2.2.2011 (Annexure P-6). Even in the reply sent by District Mandi Officer, Amritsar, to the Commission, it was mentioned that an appeal filed by the petitioner before

the first appellate authority was pending for 24.2.2011 and further along with letter dated 1.3.2011, the petitioner had submitted copy of the order passed by the first appellate authority to the Commission. Still the Commission without issuing notice to the petitioner passed the order merely writing that the information sought is not the personal information or trade secrets of a third party. The text of the order passed by the Commission is reproduced hereunder:

> " I have heard the parties through Video Conference Facility.
>
> 2. The PIO and the First Appellate Authority has wrongly interpreted the provisions of the Right to Information Act, 2005. The queries of the information seeker dated 29.11.2010 are reproduced below and these do not amount to personal information or trade secrets of a third party.
>
> > "How many account checkings of the licence were made at Vallah Vegetable Market w.e.f. 1.4.2010 till today for the session 2009-10, i.e. Name of the firm, recovery of due fees/ amount as to R.D.F., amount as to recovered penalty and details of the record from which the due amount is calculated."
>
> 3. This information shall be furnished to the complainant within 15 days from today and a compliance report should be sent to this office. The respondent shall further file a written reply to explain the delay in furnishing of the information."

12. A perusal of the aforesaid order shows that the same is totally non-speaking. It is lacking not even in reasons for which it was opined that the information sought by the applicant herein does not amount to personal information or trade secrets of a third party, even the facts of the case have not been referred to in detail. In the absence of brief facts and the reasons contained in the order, it is not possible for the next higher court to appreciate as to what weighed with the authority in reaching the conclusion and as to whether there was application of mind by the authority or the order is arbitrary. Hon'ble the Supreme Court in Kranti Associates Private

Limited and another v. Masood Ahmed Khan and others, (2010) 9 SCC 496, while referring to its earlier judgments in Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala, AIR 1961 SC 1669; Som Datt Datta v. Union of India, AIR 1969 SC 414; Bhagat Raja v. Union of India, AIR 1967 SC 1606; Travancore Rayon Ltd. v. Union of India, (1969) 3 SCC 868; Mahabir Prasad Santosh Kumar v. State of U. P., (1970) 1 SCC 764; Keshav Mills Co. Ltd. v. Union of India, (1973) 1 SCC 380; Union of India v. Mohan Lal Capoor, (1973) 2 SCC 836; Woolcombers of India Ltd. v. Workers Union, (1974) 3 SCC 318; Siemens Engg. And Mfg. Co. of India Ltd. v. Union of India, (1976) 2 SCC 981; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Rama Varma Bharathan Thampuram v. State of Kerala, (1979) 4 SCC 782; Gurdial Singh Fijji v. State of Punjab, (1979) 2 SCC 368; H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt., (1979) 4 SCC 642; Bombay Oil Industries (P) Ltd. v. Union of India, (1984) 1 SCC 141; Ram Chander v. Union of India, (1986) 3 SCC 103; Star Enterprises v. City and Industrial Development Corpn. Of Maharashtra Ltd., (1990) 3 SCC 280; S. N. Mukherjee v. Union of India, (1990) 4 SCC 594; Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi, (1991) 2 SCC 716; M.L. Jaggi v. MTNL, (1996) 3 SCC 119 and Charan Singh v. Healing Touch Hospital, (2000) 7 SCC 668 opined that every order passed by quasi-judicial authority or even an administrative authority affecting the rights of parties, must be a speaking order. It must not be like the "inscrutable face of a sphinx". The superior court cannot effectively exercise its power of judicial review unless in the order impugned, facts and reasons have been stated in detail. Merely giving an opportunity of hearing is not enough. Wherever an order can be subject to appeal or judicial review, the necessity to record reasons is even greater. It ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant facts and the law. It enables an aggrieved party to demonstrate before the higher court that the reasons on which his claim has been rejected, are erroneous. It operates as a deterrent against possible arbitrary action by any authority invested with judicial power. The aim is to

prevent unfairness or arbitrariness in reaching conclusions. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. The faith of the people in administrative authorities can be sustained only if they act fairly and dispose of the matters before them by well-considered orders. The aforesaid judgment was followed by Hon'ble the Supreme Court in ORYX Fisheries Private Ltd. v. Union of India and others, (2010) 13 SCC 427.

13. The aforesaid ground is sufficient to set aside the impugned order passed by the Commission.

14. The impugned order deserves to be set aside even on the ground of non-grant of opportunity of personal hearing to the petitioner before passing the same and further on account of the procedure adopted by the Commission, which is totally unknown in the judicial process.

15. In the case in hand, respondent No. 3 filed an application on 29.11.2010 seeking certain information. Having come to know that respondent No. 3 had sought information, which cannot be sought by any third party under the Right to Information Act, 2005 (for short, 'the Act'), an application was filed by the petitioner before the State Public Information Officer raising an objection thereto. The application having not been decided within a period of 30 days, in terms of the provisions of the Act, the petitioner filed appeal dated 23.12.2010 before the first appellate authority. The same was disposed of on 24.2.2011 providing liberty to the petitioner to raise whatever issues he wants to raise before the State Public Information Officer within 30 days of the passing of order and the State Public Information Officer was to decide the issue after affording opportunity of hearing to the petitioner. The fact as to whether the appellate authority had issued notice to respondent No. 3 before deciding the appeal filed by the petitioner is neither evident from the record produced nor the same was specifically pointed out by learned counsel for the petitioner. Even the order (Annexure P-5) passed by the first appellate authority also does not suggest the same as no presence of a counsel representing it has been marked. However, from an order passed on same date, as available on the file of the Commission, it is evident that respondent No. 3 was aware of the appeal

filed by the petitioner.

16. As is evident from the record produced, respondent No. 3 filed a complaint before the Commission on 4.2.2011 raising a grievance regarding non-furnishing of information on his request by the State Public Information Officer. The same was numbered as CC No. 341 of 2011. Vide communication dated 11.2.2011, the Commission sent a notice to respondent No. 3 intimating that his complaint has been received. In case he wants to be heard through video conferencing facility available in the office of Deputy Commissioner, he may respond so that date and time can be intimated. There is another letter dated 17.2.2011 on record requiring respondent No. 3-complainant to appear in the office of Deputy Commissioner, Amritsar on 3.3.2011 at 10.00 AM for hearing through video conferencing facility. Respondent No. 3 replied to the aforesaid communication in positive stating that he will appear on the date fixed for video conferencing. Before the date of hearing fixed before the Commission, the petitioner vide letter dated 1.3.2011, duly received in the office of the Commission, furnished a copy of the order passed on 24.2.2011 by the first appellate authority, whereby *inter-alia*, it was directed that the petitioner be heard before the application of respondent No. 3-complainant for providing information is decided. Not only this, even the District Mandi Officer, Amritsar in his letter dated 1.3.2011, addressed to the Commission, specifically pointed out the order passed in favour of the petitioner by the first appellate authority. Copies of appeal and the order passed by the appellate authority were annexed. Despite this fact being on record, the Commission did not think it appropriate to give any notice to the petitioner or take notice of the order passed by the first appellate authority, rather, the same has indirectly been set aside though not even impugned before it. The text of the order, as has already been reproduced above, gives an impression that availability of the order on record is not in dispute as the fact regarding the information sought being personal pertaining to a third party has been mentioned, which had not been raised in the complaint filed by respondent No. 3.

17. The manner in which the case was dealt with by the first appellate authority as well as the Commission shows as if game of 'hide and seek' was being played. At the first instance before the first appellate authority, in the appeal filed by the petitioner, apparently the complainant was not impleaded as party. When the matter was taken up before the Commission by the complainant, he did not think it appropriate to implead the petitioner who was objecting to the information being granted as third party. Further the Commission also did not consider it relevant to issue notice to the petitioner despite the fact that the first appellate authority had passed an order in his favour, which had been produced before the Commission. Such a procedure adopted is unknown in judicial process and even against the provision of Section 19(4) of the Act, which provides that in case a third party information is sought, he shall be granted opportunity of hearing. Grant of opportunity of hearing to a party, who may be affected by an order, is *sine qua non*. It has been consistently held so by the courts. The law on the issue was recently summed up in C.W.P. No. 10981 of 2012 —Ved Parkash and others v. State of Haryana and others, decided on 30.10.2012, whereby this court observed that no one can be condemned unheard. The relevant extracts of the same are as under:

> 13. The grievance raised by learned counsel for the petitioners in the present case is also that before deciding the appeal, the petitioners were not given any opportunity of hearing by the Commission. It cannot be disputed that no one can be condemned unheard. In case, the petitioners had filed appeal, minimum that was required was intimation of date of hearing to them so as to enable them to appear before the Commission and present their case. Reference can be made to Sayeedur Rehman v. State of Bihar, (1973) 3 SCC 333; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405; Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664; Special Leave Petition (Civil) No. 23781 of 2007—Indu Bhushan Dwivedi v. State Jharkhand and another, decided on 5.7.2010. The same

having not been done, it has resulted in prejudice to the petitioners. This ground alone is also sufficient to set aside an order passed by any authority.

14. A similar issue came up for consideration before this court in C.W.P. No. 17157 of 2010—M/s Mahindra and Mahindra Ltd. v. The Employees Provident Fund Appellate Tribunal and another, decided on 24.7.2012, where the Employees Provident Fund Appellate Tribunal, which has its principal seat at New Delhi, heard some cases by holding Camp Court at Chandigarh. However, proper intimation about the date of hearing was not given to the party concerned. The order was set aside and the matter was remitted back. This Court had also made certain suggestions regarding conduct of proceedings, requirement of mentioning of name and designation of the Presiding Officer in all the interim and final orders and service of notice by use of technology. The same are extracted below:

> 25. Before parting with the order, this court would like to comment on the manner in which the proceedings have been conducted. As has already been noticed above, the case was not being taken up date-wise i.e. on a date fixed for hearing. There are two different orders passed on one date fixing two different dates of hearing. The Tribunal is discharging important quasi judicial function. The cases cannot be dealt with in the manner in which the same has been dealt with in the present case. In some of the zimni orders even it has not been mentioned as to who had signed that order. Neither the name of the person who had signed it nor his designation has been mentioned. In future it is directed that in all interim or final orders whatever are passed in an appeal or other proceedings by the Tribunal, the officer who signs those orders, his name and designation shall be clearly mentioned.

26. In courts all proceedings take place in writing. As the file shows in the present case after 21.9.2007 when the case was adjourned to 14.12.2007, only a notice is available on record fixing the date of hearing as 19.5.2010 at Chandigarh. There is no order to take up the file on any date and directing for fixing next date of hearing and issuance of notice to the parties. In the absence thereof, under what authority a notice was issued to the parties is not available on record. The Principal seat of the Tribunal is at Delhi. As was informed, some times, it holds Circuit Bench at different places. Whichever cases are to be fixed at Circuit Bench, there has to be specific order in the file fixing the case in a particular bench. The aforesaid order should either be passed in the presence of the counsels or the parties when it listed at the Principal Bench or it should be ensured that the notice has, in fact, been served upon both the parties. Whatever the appeal is taken up for hearing there has to be an interim order on record passed on that date showing the proceedings. One of the method to ensure service of notice on the parties could be through the concerned Regional office of Employees' Provident Fund Organisation, as the establishment normally pertains to that area. We are living in the era of technology. For the means of communication, the same should be utilised. Wherever the establishments are having fax or email I.D. efforts should be made to sent a copy of the notice through that mode as well. In case it is successful, this can be adopted as the method of service of notice in future. In addition thereto, the counsel who filed the appeal should also be informed. The same can also be by way of emails. At the time of filing of the appeal, it should be a requirement that the party, and the counsel

> who has filed the appeal should provide their complete address, telephone number, fax number and email address so as to enable the Tribunal to communicate with them." *[Emphasis supplied]*

18. As there was clear violation of the principles of natural justice, the order impugned deserves to be set aside on this score as well.

19. To avoid passing of the orders of the kind in question which is resulting in creation of unnecessary avoidable litigation, Hon'ble the Supreme Court had made certain observations regarding working of the Commissions under the Act and issued directions in Namit Sharma v. Union of India, JT 2012(9) SC 166. The relevant parts thereof are extracted below:

> "99. ..... This discussion safely leads us to conclude that the functions of the Chief Information Commissioner and Information Commissioners may be better performed by a legally qualified and trained mind possessing the requisite experience. The same should also be applied to the designation of the first appellate authority, i.e., the senior officers to be designated at the Centre and State levels. However, in view of language of Section 5, it may not be necessary to apply this principle to the designation of Public Information Officer.
>
> 100. Moreover, as already noticed, the Information Commission, is performing quasi-judicial functions and essence of its adjudicatory powers is akin to the Court system. It also possesses the essential trappings of a Court and discharges the functions which have immense impact on the rights/obligations of the parties. Thus, it must be termed as a judicial Tribunal which requires to be manned by a person of judicial mind, expertise and experience in that field.....
>
> xx xx xx xx
>
> 103. The above detailed analysis leads to an ad libitum

conclusion that under the provisions and scheme of the Act of 2005, the persons eligible for appointment should be of public eminence, with knowledge and experience in the specified fields and should preferably have a judicial background. They should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Commission, in its day-to-day working. The Commission satisfies abecedarians of a judicial tribunal which has the trappings of a court. It will serve the ends of justice better, if the Information Commission was manned by persons of legal expertise and with adequate experience in the field of adjudication. We may further clarify that such judicial members could work individually or in Benches of two, one being a judicial member while the other being a qualified person from the specified fields to be called an expert member. Thus, in order to satisfy the test of constitutionality, we will have to read into Section 12(5) of the Act that the expression 'knowledge and experience' includes basic degree in that field and experience gained thereafter and secondly that legally qualified, trained and experienced persons would better administer justice to the people, particularly when they are expected to undertake an adjudicatory process which involves critical legal questions and niceties of law. Such appreciation and application of legal principles is a sine qua non to the determinative functioning of the Commission as it can tilt the balance of justice *either* way. Malcolm Gladwell said, "the key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are lacking in the latter". The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions....." [Emphasis supplied]

20. On a perusal of the record of the Commission, it was noticed that the procedure followed by them in dealing with the complaints is not in the manner it should have been by any quasi-judicial authority. Though this court appreciates the process adopted by the Commission for hearing of the parties through video conferencing making use of such infrastructure and avoiding harassment to the litigants, but still the manner in which record has been maintained certainly deserves comments by this court. There is no order sheet maintained by the Commission. The power of adjudication or passing of any interim order is conferred on the Commission, but a perusal of the file does not show that after receipt of the complaint filed by respondent No. 3, any order was passed by the Commission issuing notice to the opposite party fixing any date or the adjournment thereof. The filing of application by the petitioner placing on record the order passed by the first appellate authority has not even been noticed. The order though mentions the number of complaint as CC No. 341/2011, but its complete abbreviation has not been provided considering the fact that it is the final order, which can be subjected to judicial review. The date of filing of the complaint has not been mentioned on the order, which is *sine qua non*. In case any quasi-judicial or judicial authority decides any application/petition/appeal etc., the date of filing and date of decision is required to be mentioned. In the present case, though apparently the respondent in the complaint before the Commission as impleaded by respondent No. 3-complainant was merely the State Public Information Officer, however, there can be cases where there are more than one complainant/appellant before the Commission and so the respondents. The complete details of all the parties is required to be mentioned in the final order, which is generally termed as “memo of parties”. It enables the next higher court to know as to who were the parties before the authority/court below. The aforesaid discrepancies in the procedure is on account of the fact that the Commission is manned by the officers, who are not judicially trained.

21. It is directed that in future the Commission shall take care of the above factors while dealing with the cases.

22. Not only this, even the appeal decided by the first appellate authority is not numbered. No date of filing of the same has been mentioned. These aspects of the matter shall be taken care of even by the appellate authorities and the State Public Information Officers.

23. Further, in all complaints before the Public Information Officer, the appeal before the first appellate authority or any proceedings before the Commission, it should be ensured that the applicant files his proof of identity along with the application. It is for the reason that in some cases, it has come to the notice of this court that the applicants were not identifiable. It would ensure that only the genuine persons file applications.

24. For the reasons mentioned above, the writ petition is allowed and the impugned order (Annexure-P8) passed by the Commission is set aside. The matter is remitted back to the Commission for hearing the parties concerned afresh including the petitioner and dispose of the same by passing a speaking order.

25. The parties shall appear before the Commission for the purpose on 17.12.2012. As respondent No. 3-complainant before the Commission remained unrepresented before this court, notice may be issued to him by the Commission.

26. A copy of the order be sent to Central Information Commission, New Delhi, State Information Commission, Haryana and Home Secretary, Union Territory, Chandigarh, for compliance.

(Rajesh Bindal)
Judge

2.11.2012
mk

(Refer to Reporter)